

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 5126 of 1994
with
CIVIL APPLICATION No. 879 of 1995
in
SPECIAL CIVIL APPLICATION No. 5126 of 1994
with
SPECIAL CIVIL APPLICATION No. 10050 of 1993**

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?

2 To be referred to the Reporter or
not ?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to
the civil judge ?

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A'BAD MUNICIPAL CORPORATION & 1 - Petitioners

Versus

**AHMEDABAD MUNICIPAL MAZDOOR ASSOCIATION & 16 -
Respondent(s)**

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Appearance :

MR DIPAK C RAVAL FOR MR MR ANAND for Petitioners.
RULE SERVED BY DS for Respondent(s) : 1 - 18.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 07/12/2005

COMMON ORAL JUDGMENT

1.Since common issue is involved in both these main petitions, the same are being disposed of by this common judgment and order.

2.Special Civil Application No. 5126 of 1994 is filed by Ahmedabad Municipal Corporation, praying for quashing and setting aside Paragraph-8 of the award, Part-15, Annexure-A and declaring the same as illegal, unconstitutional, without jurisdiction, null, void and of no effect also.

3.Special Civil Application No.10050 of 1993 is filed by the petitioners for direction to the respondent Corporation to implement that part

of the award i.e. Part-15 of the award directing Corporation to give selection grade and senior scale of pay as applicable to and being paid to the trained teachers of the School Board of the respondent Corporation from the date of the said award till the date of filing of the petition in the case of the 1st petitioner, and in the case of the 2nd petitioner, from the date of the award till the date on which the 2nd petitioner retired from service as English Teacher.

4. Special Civil Application No. 5126 of 1994 was admitted and rule was issued and ad interim relief was granted in terms of Para-5 on 7.4.1994. The present respondent Nos.2 to 18 thereafter filed Civil Application No.879/1995 on 1.3.1995. Two fold prayers were made in the said application, firstly the applicant of the said Civil Application may be joined as party respondent in Special Civil Application No.5126

of 1994 and, secondly ad interim relief granted in the said Special Civil Application No.5126 of 1994 may be vacated on the condition that the payment that may be made to the applicant pursuant to the award in question shall be subject to the result of the petition. The Court vide its order dated 11.9.1995 has granted first prayer and the applicants were joined as party respondents in Special Civil Application No.5126/1994. However, as far as the second prayer is concerned, the Civil Application was ordered to be heard alongwith the main petition.

5.This Court has issued rule on 7.4.1994 in S.C.A. No. 10050 of 1993. On 28.4.1994, the Court has passed further order observing that in view of the fact that the Special Civil Application No.5126/1994 is filed by respondent No.1 alongwith School Board, where under the award Annexure-A is in challenge and that

petition having been admitted, it is in fitness that this matter should be heard alongwith the said Special Civil Application No.5126/1994. Accordingly, earlier order dated 7.4.1994 of issuing rule was modified to read that "Rule to be heard with Special Civil Application No.5126/1994." The Court has also made it clear that the question of interim relief, therefore, did not survive and it was therefore refused.

6. During the pendency of the aforesaid two petitions, Mr. M.B. Buch, learned advocate appearing for the respondents in Special Civil Application No.5126 of 1994 and for the petitioners in Special Civil Application No.10050 of 1993 and also for the applicants in Civil Application No.879 of 1995, has expired and hence the Court has issued fresh rule on 17.6.2005. Fresh rule was served so far as Special Civil Application No.5126 of 1994 is

concerned and affidavit of service was filed on behalf of the petitioners.

7.It is the case of the petitioner – Corporation in Special Civil Application No.5126/1994 that the Government of Gujarat by its order dated 24.1.1984 referred the Industrial Disputes having various terms of reference to the statutory arbitrator under Section 10-A of the Industrial Disputes Act. Pursuant to the said reference the statutory arbitrator Shri G.S.Barot, gave 19 awards. The present petition is concerned with only award Part-15 whereby untrained English Teachers are required to be given selection grade which was available to trained teachers only. The question of English Teachers was referred to in Para-8 of the award Part-15, it reads as under :-

“ENGLISH TEACHERS A grievance in regard to English Teachers in the Municipal School Board

has been made before me on behalf of these teachers. I have heard the parties in this connection and I think it proper to dispose of the question in the present award. The facts are like this. There is a special category of Teachers known as "English Teachers". They are required exclusively to teach English in 5th to 7th Standard. They are either Graduates or Inter-science with English as their subject. Now in the School Board, there are two categories of Teachers, one called "Trained Teachers" and the other "Untrained Teachers" the former getting higher pay scale than the latter. However, in the award of the learned Arbitrator Shri I.G. Thakore, the English Teachers, even though they may not satisfy the requirements of a Trained Teachers, were given the pay scale applicable to Trained Teachers. The grievance of these English Teachers is that although they are given the pay scale of a Trained Teachers, they are not being given the

Selection Grade being given to the Trained Teachers which, according to them, should be granted to them. I think, there is substance in their grievance. As it is, they are already at par with the trained teachers, having been given the pay scale available to a Trained Teacher. There is no reason now to deprive them of the Selection Grade available to Trained Teachers. With English as their subject, they are a distinct class by themselves and cannot be brought down to the level of other untrained teachers. By granting them the pay scale of a Trained Teacher, they are deemed to be Trained Teachers. Under the circumstances, I direct that the English Teachers should be given the Selection Grade or Senior Scale as given to the Trained Teachers in the School Board."

8.Mr. Dipak C. Raval, learned advocate appearing for Mr. M.R. Anand, for the petitioners has

submitted that the award of Part-15 of the Para-8 pertaining to English Teacher is absolutely illegal, unconstitutional, without jurisdiction and bad in law, as it is contrary to the public policy and as evidence on record. He has further submitted that the petitioner in its written statement filed before the Arbitrator wherein, for the English Teacher it was very specifically pointed out that English Teachers cannot be treated separately and all other untrained teachers are denied the selection grade which was available to trained teachers only. This specific reply of the petitioners was not considered by the learned Arbitrator and it was not dealt with in the relevant part of the impugned award. He has further submitted that there was no special reason for treating English Teachers differently from other teachers. Even if there was any special reason there was no basis for putting trained teachers and untrained teachers

in the same class. He submitted that such a classification is violative of Articles 14 and 16 of the Constitution of India, as it violates the fundamental rights of the trained teachers.

9. He has further submitted that there is settled legal position to the effect that there should be different pay on the basis of different educational qualifications and it would amount to rational qualification and no fault can be found with such classification. He has further submitted that in the Government service and in the services of the Corporation also diploma holders and degree holders though both working in the same post are paid the different salaries. Similarly judicial notice could be taken of the fact that selection grade is available only to trained teachers all over the State and not to untrained teachers. He has further submitted that a policy circular was issued by Director of Education in this behalf

to all the District Primary Education Committees. The award of the Arbitrator creates a special class of untrained teachers working with the petitioners who were treated as equal to trained teachers and thus undermining the very object of encouraging the teachers to become trained teachers.

10. Mr. Raval further submitted that there are untrained teachers or undergraduate teachers in other subjects. They are not given the selection grade. The award of the Tribunal requires payment of selection grade to untrained English Teachers. This will give rise by similar demand by other untrained teachers teaching other subjects in Standard -V to VII. This part of the impugned award instead of giving rise to industrial peace will only add to industrial unrest. He has further submitted that simply because untrained teachers are given the same grade which is paid

to trained teachers that does not mean that they should be further rewarded for their lack of training by giving them selection grade which is available only to trained teachers. He has, therefore, submitted that the reasonings given by the learned Arbitrator by giving them regular pay scales, they are deemed to be trained teachers are not justifiable or rational and the same would undermine the object of achieving trained teachers and is, therefore, unreasonable and arbitrary and liable to be quashed and set aside.

11.Mr. Raval further submitted that the impugned order Para-8 of the award is clearly beyond the jurisdiction of the Arbitrator. The issue to be considered was regarding promotion policy of the cadres mentioned therein. The issue regarding selection grade to the English Teachers was not the subject matter of the reference at all and the learned Arbitrator

deciding this on his own when the specific issue is not referred to is clearly in violation of the terms of the reference made to him. He has further submitted that there is no cadre of English Teachers as such and no special treatment could be given by picking out the so called English Teachers who think they are class by themselves. He has, therefore, submitted that the said part of the award is absolutely illegal, unconstitutional and uncalled for and deserves to be quashed and set aside.

12.As stated earlier Special Civil Application No.10050/1993 was filed for implementation of the said part of the award. It is the case of the petitioners that the petitioners have joined service of the Ahmedabad Municipal Corporation as English Teachers in the School run and managed by the Corporation. Since the petitioners have been conferred the status of

trained teachers, the pay scale applicable to such trained teachers was not made applicable to the petitioners, nor had they been given the Selection Grade which was given to the Trained Teachers. The petitioners were, therefore, hurt by the discrimination shown by the respondent Corporation. It is further stated that despite the fact that the award qua the English Teachers including the petitioners was binding on the respondent Corporation, the respondent Corporation has so far not implemented the award and the petitioners amongst other English Teachers, continue to be deprived of the Selection Grade or Senior Scale as awarded in the said award, which are given to the Trained Teachers in the School Board. It is further submitted that several representations were made to the respondent Corporation requesting them to implement the award of the sole Arbitrator given in the case of the English Teachers. However, the

respondent has not paid any heed and has not implemented the said award so far. It is further stated that the respondent Corporation is bound to follow the principle enunciated by the various decisions of the Hon'ble Supreme Court, that is, "equal pay for equal work". The petitioners have, therefore, prayed for the immediate implementation of the award given by the sole Arbitrator with regard to the English Teachers.

13. After having heard learned advocate appearing for the petitioner in Special Civil Application No.5126/1994 and after having considered the facts stated and averments made in both the petitions and after having gone through the award passed by the Arbitrator, the Court is of the view that the Selection Grade awarded by the Arbitrator to the trained English Teachers is contrary to the law laid down by this Court as well as by the Hon'ble Supreme Court. The

Court has arrived at this conclusion on the basis of the decision of this Court in the case of Jayantigar S. Gosai vs. State of Gujarat & Anr., reported in 2000(4) GLR, 3265, wherein it is held that what a teacher, who is trained as a P.T.C. Can teach to a student, who has just entered the school, the B.Ed, teacher cannot teach. The person who is qualified as B.Ed, is trained for teaching secondary school pupils. The pupils of secondary school are trained and are not to be taught from the beginning. The requirement of secondary school pupils are quite different, their subjects are different, level is different and area is different. All these aspects are required to be kept in mind. Merely because the teacher who is qualified as B.Ed., is appointed as a teacher in a primary school, that does not mean that all who are B.Ed., can teach the students who are in the primary school. The teacher who is qualified as P.T.C. Is given the training to teach the

students of primary school and is experienced in the branch of teaching the students of Primary School. The Court has further observed that in view of what is observed by the Apex Court in AIR 1989 SC 183 & AIR 1990 SC 5, the petitioner has no case and the petition must be dismissed and the Court does not approve the decision of this Court in Satishchandra Bhailalbhai State vs. State of Gujarat, 1984(1) GLR 651, and in Special Civil Application No.2903 of 1988 (Coram :N.N.Mathur, J.) dated 6.2.1996 and the aforesaid two decisions were overruled.

14.This Court's attention was further drawn to the decision of Hon'ble Supreme Court in the case of T.Narasimhacharyulu and others vs. State of Andhra Pradesh and another, reported in AIR 1994 Supreme Court, 770, wherein the Court has observed that suffice it to say that the main issue involved is whether these

teachers teaching non-technical subjects were entitled to the revised pay scale. The Curt further observed that it was not the intention of the State Government to apply the revised pay scales sanctioned in G.O. Ms.No.1329 dated 16.5.1961 to non technical teaching staff and consequently the appellants who did not possess the qualifications prescribed and which are given UGC scales in the general Education Department have no right to claim the revised pay scales at a later stage. The Curt has further held that the distinction made by the State Government inspite of the Central Government's approval is not discriminatory.

15.After considering the aforesaid judicial pronouncements and after considering the discussion made hereinabove, the Court is of the view that the Arbitrator's award granting benefit of Selection Grade to the non trained English Teachers is not just and proper, it

would frustrate the whole object of establishing the industrial peace. The petitioner has further stated that other cadres of non trained teachers are not granted this benefit of Selection Grade and hence there is no question of separate class for granting benefit to non trained English Teachers only. There is no justification in awarding this benefit to the non trained English Teachers. This part of the award is, therefore, quashed and set aside.

16. Special Civil Application No.5126 of 1994 is, therefore, allowed. Rule is made absolute to the aforesaid extent without any order as to costs.

17. Since the Special Civil Application No.5126 of 1994 is disposed off, the Civil Application No.879 of 1995 does not survive and is accordingly disposed off.

18. Since the Court has taken the view in Special Civil Application No.5126 of 1994 that Part-8 of the award is not sustainable, there is no question of implementation thereof and hence Special Civil Application No.10050 of 1993 is accordingly dismissed. Rule is discharged without any order as to costs.

(K. A. PUJ, J.)

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